

ESTTA Tracking number: **ESTTA769487**

Filing date: **09/08/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061693
Party	Defendant Boehringer Ingelheim International GmbH
Correspondence Address	MARTIN J BERAN OSTROLENK FABER LLP 1180 AVENUE OF THE AMERICAS, 7TH FLOOR NEW YORK, NY 10036 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Martin J. Beran
Filer's e-mail	fbrown@ostrolenk.com, email@ostrolenk.com, tm@ostrolenk.com
Signature	/martin j beran/
Date	09/08/2016
Attachments	01965261.PDF(625603 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Ferndale IP, Inc,	:	
	:	
Petitioner,	:	Cancellation No.: 92061693
-vs-	:	Registration No.'s: 4460694,
	:	460693 and 4405327
	:	Cancellation No.:92061665
Boehringer Ingelheim International GmbH.	:	Registration No. 4416606
	:	
Respondent	:	
	:	
-----X		
Commissioner for Trademarks		
P.O. Box 1451		
Alexandria, VA 22313-1451		

MOTION FOR THREE MONTH FURTHER SUSPENSION OF PROCEEDINGS

SIR:

Based upon the annexed Affidavit of Martin J. Beran, Respondent, with the consent of Petitioner respectfully requests a further three month suspension of proceedings resetting the times as set forth below:

Time to Answer	12/11/2016
Deadline for Discovery	01/11/2017
Discovery Opens	01/11/2017
Initial Disclosures Due	02/10/2017
Expert Disclosures Due	06/10/2017
Discovery Closes	07/09/2017
Plaintiff's Pretrial Disclosures	08/24/2017
Plaintiff's 30-day Trial Period Ends	10/08/2017
Defendant's Pretrial Disclosures	10/23/2017

Defendant's 30-day Trial Period Ends
Plaintiff's Rebuttal Disclosures
Plaintiff's 15-day Rebuttal Period Ends

12/06/2017
12/21/2017
01/21/2018

Date: September 8, 2016

Respectfully submitted,

OSTROLENK FABER LLP

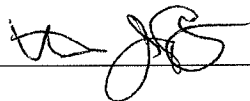
Attorneys for Respondent

By: 
Martin J. Beran

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing MOTION FOR THREE MONTH FURTHER SUSPENSION OF PROCEEDINGS together with Affidavit of Martin J. Beran was served upon counsel for applicant at the correspondence addresses listed in U.S. Patent and Trademark Office records this 8th day of September 2016 by email, addressed as follows:

JULIE GREENBERG
JULIE.GREENBERG@DINSMORE.COM

A handwritten signature in black ink, appearing to read 'M. Beran', is written over a horizontal line.

Martin J. Beran
Attorney for Respondent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Respondent	:	
	:	

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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

AFFIDAVIT OF MARTIN J. BERAN

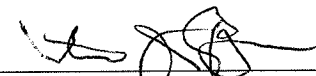
Sir:

Martin J. Beran, being duly sworn, deposes and states as follows:

- I am trademark counsel at Ostrolenk Faber LLP, attorneys for respondent and represent Boehringer Ingelheim International GmbH, in the above cancellation proceedings for which the deadline for filing the Answer in each proceeding is September 11, 2016.
- This request for a three month suspension of proceedings is made with acknowledgement of the communication of The Trademark Trial and Appeal Board dated August 15, 2016 which requested settlement details with respect to this proceeding, a recitation of issues that have been resolved, issues that remain to be resolved and a firm timetable for resolution.
- This proceeding has been settled as shown by the annexed copy of the Coexistence and Consent Agreement between the parties. This Agreement provides, that with respect to the six registrations and one application set forth therein respondent will amend the description of goods clause so as to delete the words "dermatological preparations" therefrom. When this has been accomplished, petitioner will withdraw the cancellation proceedings without prejudice.

4. The amendment to the description of goods clause has been attended to in connection with the pending application. Insofar as the six registrations are concerned, it was necessary to go back to WIPO to have this taken care of.
5. As of the present time, the terminology "dermatological preparations" still remains in connection with Registration No. 4,460,693 for the mark PRAXDOTA and Registration No. 4,460,694 for the mark PRAXFAB even though the enclosed TARR reports indicate that there has been some incomplete action, namely, on July 7, 2016 the limitation of goods was received from IB in connection with each registration.
6. There has been no further action in connection with these registrations and accordingly the term "dermatological preparations" still remains therein such that under the agreement between the parties petitioner is under no obligation to terminate these proceedings.
7. Any action which The Trademark Trial and Appeal Board can take to encourage further movement on this issue with respect to the above registrations would be greatly appreciated. In any event, the parties cannot provide a firm timetable for resolution as requested by The Trademark Trial and Appeal Board in its decision of August 15, 2016 since the matter is not under our control.
8. In view of all of the foregoing, it is respectfully requested that the further three month extension of time herein should be granted with the understanding that upon the deletion of "dermatological preparations" from the two registrations by the U.S. Patent and Trademark Office the parties will move to expedite the termination of the cancellation proceedings.

Date: September 8, 2016



Martin J. Beran

Sworn before me this
Day of September 8, 2016



Notary Public
Commission Expires
(Affix Notary Stamp or Seal)

MJB:fb

ROSEMARY C. O'NEILL
Notary Public, State of New York
No. 01ON5039914
Qualified in Queens County
Commission Expires March 6, 2019

{01964524.1}

COEXISTENCE AND CONSENT AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into on the date of signature below, by and between Ferndale IP, Inc., having an address at 780 West Eight Mile Road, Ferndale, MI 48220 ("Ferndale") and Boehringer Ingelheim International GmbH, of Binger Str. 173, Ingelheim 55218 Germany ("Boehringer") (collectively referred to herein as the "Parties").

WHEREAS, Ferndale owns and has used the mark "PRAX" in connection with pharmaceutical preparations, namely topical preparations, since at least as early as 1985 and owns U.S. Trademark Registration No. 1353649 for PRAX (the "Registration");

WHEREAS, Boehringer owns U.S. Registrations for marks containing the term PRAX (hereafter the "Boehringer U.S. PRAX Registrations") with a priority date after Ferndale's first use of its PRAX mark, which Registrations include, but are not necessarily limited to:

- Reg. No. 4416606 for PRAXBIND;
- Reg. No. 4460694 for PRAXFAB;
- Reg. No. 4460693 for PRAXDOTA;
- Reg. No. 4405327 for PRAXDOT;
- Reg. No. 4416608 for JUNTPRAX;
- Reg. No. 4434528 for VORPRAX;
- Serial No. 79171941 for PRAXBIND & Design

WHEREAS, Ferndale has filed Cancellation Proceedings against certain of the Boehringer U.S. PRAX Registrations, which Cancellations have been designated as Cancellation No. 92061693 and 92061665 (the "Cancellations");

WHEREAS, pursuant to agreement of the Parties, Boehringer has not filed Answers to the Cancellations;

{01816841.1}

WHEREAS, the Parties wish to resolve the disputes between them as to the Cancellations, and as to all use and registration in the U.S. by Boehringer of marks containing the term PRAX, by the terms set forth in this Coexistence and Consent Agreement.

NOW THEREFORE, in consideration of and in exchange for the promises and mutual covenants hereinafter set forth, the adequacy of which is expressly acknowledged, the Parties, on behalf of their affiliates, agents, parties-in-privity, successors and assigns, hereby agree as follows:

1. Boehringer warrants and represents that the above-listed Boehringer US PRAX Registrations is a comprehensive list of all U.S. Trademark Registrations and/or Applications (including Extensions of Protection) owned by it and/or its agents, affiliates, or parties-in-privity which contain the term PRAX, and that no others exist.

2. Boehringer acknowledges Ferndale's prior rights in the mark PRAX, alone or as a component of any mark or design, for pharmaceutical products for topical or dermatological applications.

3. Boehringer shall amend all existing U.S. Registrations and/or pending applications (including Extensions of Protection) owned by it, its agents, affiliates or parties-in-privity, for marks containing the term PRAX, including but not limited to the Boehringer U.S. PRAX Registrations, by deleting from the description of goods the language "pharmaceutical preparations for the treatment of dermatological diseases and disorders" or other language referring to dermatological or topically applied products.

4. Boehringer agrees to permanently discontinue all use in the U.S. of any mark containing the term PRAX in connection with pharmaceutical products intended, used, or promoted for topical or dermatological application or use.

5. Boehringer agrees not to file for U.S. Registration (including U.S. Extensions of Protection of International Registrations) of any mark containing the term PRAX for pharmaceutical products intended for dermatological or topical use.

6. Boehringer hereby expressly consents to any and all existing or future use and/or registrations by Ferndale, its agents, affiliates, parties-in-privity, successors, assigns, for marks containing the term PRAX alone or as a component of any mark, word or design for pharmaceutical products for topical or dermatological applications or use with the exception of marks identical with the Boehringer U.S. PRAX Registrations as long as such registration exists or use in commerce has not stopped for a period of at least three years Boehringer further agrees to cooperate in the preparation of additional paperwork as may be required to establish this consent in the future.

Boehringer agrees never to challenge or contest any use, registration or trademark application in the U.S. (including US Extensions of Protection), by Ferndale, its agents, affiliates, parties-in-privity, successors or assigns of any mark containing the term PRAX, in whole or in part, in any format, for goods containing or relating to pharmaceutical products for topical or dermatological applications or use with the exception of marks identical with the Boehringer U.S. PRAX Registrations as long as such registration exists or use in commerce has not stopped for a period of at least three years.

7. Ferndale consents to the registration and use of the trademarks depicted in the Boehringer U.S. PRAX Registrations under the conditions as stipulated above.

8. In the event that either Party becomes aware of confusion between the Ferndale PRAX Mark and any PRAX-containing mark owned and/or used by Boehringer for pharmaceutical

preparations, the Parties shall cooperate in good faith to avoid confusion.

9. The Parties agree to suspend the Cancellations on Consent as necessary until confirmation that all amendments required in Paragraph 3 have been accepted in order to avoid the filing by Boehringer of Answers to the Cancellation.

10. Upon proof of acceptance of the amendments of Par. 3 hereof, Ferndale shall withdraw the Cancellations without prejudice.

11. This agreement shall remain in force until such time as Ferndale, its agents, affiliates, parties-in-privity, successors, and/or assigns no longer own any valid rights to any PRAX marks by virtue of non-use of same in the U.S. for a period of at least three years.

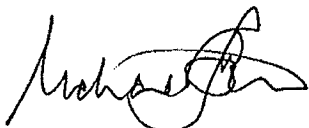
12. This Agreement shall be binding upon the Parties and their agents, affiliates, parties-in-privity, successors and assigns.

13. Each Party shall bear its own costs and expenses in connection herewith.

14. This is the entire agreement of the Parties and may only be modified by a written instrument signed by the Parties. This Agreement shall be governed by the laws of the State of Michigan, except as to conflicts of laws, and any disputes between the parties shall be resolved by the federal and state courts situated therein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as follows:

FERNDALE IP, INC.



By: MICHAEL J. SWANS

Name:
Title: PRESIDENT

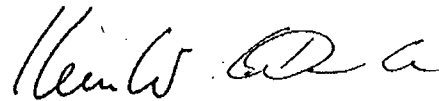
Date: 12/14/15

BOEHRINGER Ingelheim International
GMBH

ppa.

i.V.

By:



Name: M. Kammler C. Dumke
Title: (in-house trademark counsels)

Date: 26 November 2015

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Mark: PRAXFAB

PRAXFAB

US Serial Number: 79132994

Application Filing Date: May 14, 2013

US Registration Number: 4460694

Registration Date: Jan. 07, 2014

Register: Principal

Mark Type: Trademark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jun. 19, 2015

Publication Date: Oct. 22, 2013

Mark Information

Mark Literal Elements: PRAXFAB

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1167600

International Registration Date: May 14, 2013

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Pharmaceutical preparations, namely, pharmaceutical preparations for the treatment of diseases and disorders of the alimentary tract and metabolism, and blood and blood forming organs; pharmaceutical preparations for the treatment of diseases and disorders of the cardiovascular system, musculoskeletal system, central nervous system, peripheral nervous system, genitourinary system and respiratory system; and pharmaceutical preparations for the treatment of dermatological, hormonal, infectious, viral and oncological diseases and disorders

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: Yes	Currently 66A: Yes	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Boehringer Ingelheim International GmbH

Owner Address: 55218 Ingelheim
GERMANY

Legal Entity Type: CORPORATION

State or Country GERMANY
Where Organized:

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent MARTIN J BERAN
Name/Address: OSTROLENK FABER LLP
1180 AVENUE OF THE AMERICAS
7TH FLOOR
NEW YORK, NEW YORK 10036
UNITED STATES

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 07, 2016	LIMITATION OF GOODS RECEIVED FROM IB	61693
Jun. 19, 2015	CANCELLATION INSTITUTED NO. 999999	
Feb. 28, 2014	NOTIFICATION PROCESSED BY IB	
Feb. 10, 2014	FINAL DISPOSITION NOTICE SENT TO IB	72589
Feb. 10, 2014	FINAL DISPOSITION PROCESSED	
Feb. 06, 2014	GRANT OF PROTECTION CREATED, TO BE SENT TO IB	
Jan. 07, 2014	REGISTERED-PRINCIPAL REGISTER	74781
Oct. 22, 2013	PUBLISHED FOR OPPOSITION	
Oct. 21, 2013	NOTIFICATION PROCESSED BY IB	
Oct. 02, 2013	NOTIFICATION OF POSSIBLE OPPOSITION SENT TO IB	67445
Oct. 02, 2013	NOTICE OF START OF OPPOSITION PERIOD CREATED, TO BE SENT TO IB	
Oct. 02, 2013	NOTICE OF PUBLICATION	
Sep. 09, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	67445
Sep. 02, 2013	ASSIGNED TO EXAMINER	
Jul. 31, 2013	APPLICATION FILING RECEIPT MAILED	
Jul. 27, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	67445
Jul. 26, 2013	LIMITATION FROM ORIGINAL APPLICATION ENTERED	
Jul. 25, 2013	SN ASSIGNED FOR SECT 66A APPL FROM IB	

International Registration Information (Section 66a)

International 1167600
Registration
Number:

Priority Claimed Yes
Flag:

Intl. Registration REQUEST FOR EXTENSION OF PROTECTION
Status: PROCESSED

Notification of Jul. 25, 2013
Designation Date:

International May 14, 2023
Registration
Renewal Date:

First Refusal Flag: No

International May 14, 2013
Registration Date:

Date of Section 67 Nov. 21, 2012
Priority Claim:

Date of Jul. 25, 2013
International
Registration
Status:

Date of Automatic Jan. 25, 2015
Protection:

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 07, 2014

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Cancellation

Proceeding 92061693
Number:

Filing Date: Jun 19, 2015

Status: Pending

Status Date: Jun 19, 2015

Interlocutory ANDREW P BAXLEY
Attorney:

Defendant

Name: Boehringer Ingelheim International GmbH

Correspondent MARTIN J BERAN
Address: OSTROLENK FABER LLP
1180 AVENUE OF THE AMERICAS, 7TH FLOOR
NEW YORK NY , 10036
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
PRAXFAB	Cancellation Pending	<u>79132994</u>	<u>4460694</u>
PRAXDOTA	Cancellation Pending	<u>79132993</u>	<u>4460693</u>
PRAXDOT	Cancellation Pending	<u>79129491</u>	<u>4405327</u>

Plaintiff(s)

Name: Ferndale IP, Inc.

Correspondent JULIE A GREENBERG
Address: GIFFORD KRASS SPRINKLE ET AL
2701 TROY CENTER DRIVE, STE 330
TROY MI , 48084
UNITED STATES

Correspondent e-mail: docket@patlaw.com , dnichols@patlaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
PRAX	Renewed	<u>73501842</u>	<u>1353649</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 19, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 19, 2015	Jul 29, 2015
3	PENDING, INSTITUTED	Jun 19, 2015	
4	D MOT FOR EXT W/ CONSENT	Jul 20, 2015	
5	EXTENSION OF TIME GRANTED	Aug 06, 2015	
6	D APPEARANCE / POWER OF ATTORNEY	Aug 10, 2015	
7	D MOT FOR EXT W/ CONSENT	Aug 24, 2015	
8	EXTENSION OF TIME GRANTED	Sep 01, 2015	
9	STIP FOR EXT	Oct 30, 2015	
10	EXTENSION OF TIME GRANTED	Oct 30, 2015	
11	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Dec 09, 2015	
12	SUSPENDED	Dec 22, 2015	
13	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Feb 22, 2016	
14	SUSPENDED	Mar 10, 2016	
15	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	May 18, 2016	

16	SUSPENDED	Jun 04, 2016
17	D MOT FOR EXT W/ CONSENT	Aug 15, 2016
18	EXTENSION OF TIME GRANTED	Aug 15, 2016

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Mark: PRAXDOTA

PRAXDOTA

US Serial Number: 79132993

Application Filing Date: May 14, 2013

US Registration Number: 4460693

Registration Date: Jan. 07, 2014

Register: Principal

Mark Type: Trademark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jun. 19, 2015

Publication Date: Oct. 22, 2013

Mark Information

Mark Literal Elements: PRAXDOTA

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1167599

International Registration Date: May 14, 2013

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
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International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: Yes	Currently 66A: Yes	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Boehringer Ingelheim International GmbH

Owner Address: 55218 Ingelheim
GERMANY

Legal Entity Type: CORPORATION

State or Country GERMANY
Where Organized:

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

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International Registration Information (Section 66a)

International 1167599
Registration
Number:

Priority Claimed Yes
Flag:

Intl. Registration REQUEST FOR EXTENSION OF PROTECTION
Status: PROCESSED

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Date of Automatic Jan. 25, 2015
Protection:

TM Staff and Location Information

TM Staff Information - None

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Attorney:

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Plaintiff(s)

Name: Ferndale IP, Inc.

Correspondent JULIE A GREENBERG
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Correspondent e-mail: docket@patlaw.com , dnichols@patlaw.com

Associated marks

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16 SUSPENDED
17 D MOT FOR EXT W/ CONSENT
18 EXTENSION OF TIME GRANTED

Jun 04, 2016
Aug 15, 2016
Aug 15, 2016